

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, APRIL 23, 2004
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:04 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Tim Johns
Mr. Ted Yamamura

Ms. Lynn McCrory
Ms. Kathryn Inouye

STAFF

Mr. Holly McEldowney, HP
Mr. Cyrus Chen, Land
Mr. Brian Kanenaka, DAR

Ms. Dede Mamiya, Land
Mr. Sam Lemmo, OCCL
Mr. Mike Buck, DOFAW

OTHER

Ms. Pam Matsukawa, Deputy Attorney General
Ms. Kim Kihleng, I-1
Mr. Bill Moore, D-3
Mr. Cam Cavasso, D-8
Ms. Elizabeth Toledo, D-4

Mr. Brandi Beauder, D-3
Mr. Gregg Kashiwa, D-9
Mr. Paul Bienfang, D-6

Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of April 8, 2004

Unanimously approved as submitted (McCrory/Inouye).

Item I-1: Request to Approve Restrictive Covenant Agreement for the Chamberlain House, Mission Houses Museum.

Holly McEldowney Acting Administrator for Historic Preservation informed the Board the Mission Houses Museum would like to enter into an agreement with Historic Preservation for the restoration on the Chamberlain House. The length of the agreement will be fifty (50) years. Ms. McEldowney made it known this agreement was required by the National Park Service in order to receive a grant monies for the restoration of the Chamberlain House. Ms. McEldowney recommended the Board authorize the State Historic Preservation Officer to enter into a covenant agreement on behalf of the Department of Land and Natural Resources, State of Hawaii, with the Mission Houses Museum to establish a preservation easement for the Chamberlain House.

Kim Kihleng director of the Chamberlain House noted this agreement would have no adverse impacts on the operations at the Chamberlain House.

Unanimously approved as submitted (Johns/Yamamura).

Item D-3: Grant of Perpetual Non-Exclusive Easement to Parker Ranch, Inc. for Access Purposes, Laupahoehoe, North Hilo, Hawaii, TMK: (3) 3-7-01:02 and (3) 3-6-06:46.

Dede Mamiya Administrator of the Land Division indicated the applicant's parcel is landlocked. The applicant is here today to request an easement over an existing road that was built in the 1980's. The road also crosses over lands owned by Kamehameha Schools and the applicant is currently in discussion to acquire an easement over these lands. If the negotiations with Kamehameha School fail the applicant proposes an alternative easement alignment. As part of the Applicant's requirements, staff has included a condition that the applicant grants two perpetual non-exclusive easement alignments to the State of Hawaii so the State can access the forest reserve. Ms. Mamiya recommended the Board authorize the issuance of a perpetual, non-exclusive easement and immediate right-of-entry to Parker Ranch.

Brandi Beauder and Bill Moore of Parker Ranch were on hand to answer any questions.

Unanimously approved as submitted (Johns/Inouye).

Item D-9: After-the-Fact Grant of Term, Non-Exclusive Easement for Seawall Purposes to Edmond Benech and Margarita Sanchez, Holualoa 3rd, North Kona, Hawaii, TMK: 7-7-04: Seaward of Parcel 41.

Ms. Mamiya pointed out in attempting to obtain a shoreline certification for their property a survey revealed a portion of an existing seawall was encroaching approximately eighty (80) feet onto State land. The Office of Conservation and Coastal Lands has reviewed the encroachment and has determined there are minimal adverse impacts on the natural resources if the seawall remains. Due to the fact the applicant would like to finalize the shoreline certification process, staff is asking that the applicant be allowed to pay a deposit of \$4,455.00, which is the estimated consideration amount. Because the area of encroachment is less than 100 square feet staff is requesting no imposition of fines. Ms. Mamiya recommended the Board authorize the issuance of a Fifty-five (55) year term, non-exclusive easement to the applicant.

Gregg Kashiwa the applicant was present.

Unanimously approved as submitted (Johns/Inouye).

Item D-8: Request for Clarification of Character or Use, General Lease No. S-3780, Campbell Cavasso, Lessee, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-026:019.

Ms. Mamiya communicated this lease was sold at public auction in 1963. The character of use of the subject lease is "Diversified Agriculture" which in the lease states, "shall not include or embrace the cultivation of grass or forged crops except as covered crops." The current lessee, Cam Cavasso is a landscape contractor and his main business is to provide hybrid turf grass for ornamental and erosion control purposes. Mr. Cavasso is here today to confirm what he is doing is permitted under the character of use of his lease. Staff researched the subject and came to the conclusion the character of use is to discourage pasture use. Upon further discussions with the Department of Agriculture it was pointed out that turf grass is a nursery crop and is therefore permitted under diversified agriculture. Ms. Mamiya recommended the Board affirm that turf grass propagation is an allowable use under General Lease No. S-3780.

Cam Cavasso came forward to confirm he is growing hybrid grass on the subject parcel. He went on to explain the process of growing hybrid grass. Mr. Cavasso told the Board he does contracting for approximately fifteen (15) companies. He made it known staff from the Department comes out to the property annual to confirm the use of the property. Mr. Cavasso indicated he would be willing to sign a letter affirming that he is growing hybrid grass on the property.

Unanimously approved as submitted (Inouye/McCrory).

Item D-6: Forfeiture of Revocable Permit No. S-7256, Controlled Environment Aquaculture Technology, Inc., Permittee Hanapepe Town Lots, 1st Series, Lots 54-B, 58-B and 82, Hanapepe, Kauai, TMK: (4) 1-9-10: 34, 35, 38, and 1-9-11:7.

Ms. Mamiya indicated the applicant was served a notice of default for not keeping real property tax payments current. She went on to say she believed the permittee has contacted the Real Property Tax Office on Kauai to resolve this issue.

Paul Bienfang of Ceatech USA provided the Board with a letter of agreement from the County of Kauai, Real Property Tax Office regarding the payment of back taxes.

Ms. Mamiya recommended the withdrawal of this item.

Unanimously approved to withdraw (McCrory/Johns).

Item D-4: Forfeiture of General Lease No. S-4323, Tri-K Investments, LLC, Lessee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-10:33.

Ms. Mamiya disclosed a notice of default was sent to the applicant for failure to: keep lease rental payments current, post the required performance bond and post the required liability insurance. As of today the lessee has cured the rental payments and the liability insurance issue. Still outstanding is the failure to post the required performance bond. Ms. Mamiya recommended the Board authorize the cancellation of General Lease No. S-4323.

Elizabeth Toledo vice president of Tri-K Investments came forward to testify. She communicated they've tried to obtain the required performance bond from their insurance company but was unsuccessful. She noted Central Pacific Bank has a stand by letter of credit in lieu of the bond requirement and are prepared to submit to the Board once the document is finalized. The document will be finalized early next week.

The Board amended the Recommendation Section by adding that if the Lessee cures the performance bond default in 30 days, the forfeiture approval shall be automatically rescinded.

Unanimously approved as amended (Johns/Inouye).

Item D-2: Grant of a Term Non-Exclusive Easement for Roof overhang to the Charles Stone and Louise Wolcott, Kaneohe, Koolauloko, Oahu, TMK: (1) 4-5-01:30 seaward.

Ms. Mamiya conveyed the applicant is participating in the Kaneohe Piers Amnesty Program and during the preparation of the required maps it was made known a roof overhang was shown to be encroaching approximately 57 square feet onto State lands. Since the area of encroachment is less than 100 square feet staff believes the \$500 fine should be waived. Ms. Mamiya recommended the Board authorize the issuance of a 55-year term, non-exclusive easement for roof overhang to the applicants.

Unanimously approved as submitted (Inouye/McCrory).

- Item D-1:** After-the Fact Consent to a Revocable Permit No. 25 Between Department of Business, Economic Development and Tourism and Northern Entertainment Productions, Inc. for Land under Governor's Executive Order No. 3450, Kapahulu, Oahu, TMK: (1) 3-1-42: por. 9.
- Item D-5:** Issuance of Revocable Permit to Michael and Joy Mentnech, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-50:81.
- Item D-7:** Issuance of a Right-of-Entry Permit to Department of Land and Natural Resources, Engineering Branch on Land Encumbered by Revocable Permit No. S-7275, Kalepa Unit E, por. of Lihue-Koloa for Res. (Wailua Sec.), Wailua, Lihue, Kauai, TMK: (4) 3-9-2:por. 1.
- Item D-10:** Rescind Prior Board Action of December 20, 1991 (Agenda Item F-9), Grant of Perpetual, Non-Exclusive Easement to Robert Williams for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-3: portions 8 and 40.
- Item D-11:** Grant of Perpetual, Non-Exclusive Easement to East Maui Irrigation Company, Limited for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-3: portion 8.
- Item D-12:** Acquisition of Perpetual, Non-Exclusive Easements for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-3: portions 24 and 25.
- Unanimously approved as submitted (Johns/McCrory).**
- Item D-13:** Appraisal Methodology to Determine Easement Consideration for Shoreline Encroachments.

Ms. Mamiya communicated staff hired Jan Medusky to come up with a methodology for determining consideration for shoreline encroachment. The Medusky report commented on the Kaneohe Bay Program methodology, which determined a one time payment for a term easement. Medusky had a problem using the tax assessed land values because it does not result on consistently reliable conclusion. In five case studies, the tax assessed land value is always lower than the actual appraised land market value. Ms. Mamiya went over the different components in the proposed shoreline encroachment methodology developed by Medusky. Even though staff agreed with Medusky's proposed formula they were still concerned with the time and cost of hiring an outside appraiser. Therefore staff identified additional alternative methods for determining fee simple land values: 1) hire an independent appraiser; 2) Conduct in-house appraisal and 3) Use county tax assessed land values. Staff believes that not just one method should be used instead staff should be provided the flexibility in determining the appropriate method to determine the fee simple land value. In closing Ms. Mamiya recommended the Board adopt the

appraisal methodology list in the recommendation section of the submittal to determine term easement consideration for shoreline encroachment subject to the four conditions listed.

The Board amended the Recommendation Section by amending paragraph 3) to read as follows:

“3) Where the estimated easement value is \$500 or less using the tax assessed land value, a [~~Nuisance Value~~] minimum rent of \$500 shall be charged;”

Unanimously approved as amended (Inouye/McCrory).

Item F-1: Approval of Increased Funding for Contract No. 50027: A DLNR/RCUH Agreement for the Statewide Public Fishing Areas Project (July 1, 2004 – June 30, 2005).

Unanimously approved as submitted (McCrory/Johns).

Item C-1: Approval of a Management Plan for Fence Maintenance in the Forest Reserves, Restricted Watersheds and Natural Area Reserves of Hamakua and Kohala.

Item C-2: Approval of Construction and Inclusion of the Kahakapao Loop Trail, Makawao Forest Reserve, Island of Maui, as part of the Na Ala Hele Trail and Access Program.

Item C-3: Approval of Construction and Inclusion of the Ohai Trail, Kahakuloa Game Management Area, Island of Maui, as part of the Na Ala Hele Trail and Access Program.

Michael Buck Administrator of the Division of Forestry and Wildlife recommended the Board approve the above three items as listed is the submittal.

Unanimously approved as submitted (Johns/Yamamura).

Item K-1: Conservation District Use Application (CDUA) KA-3185 for Kalaheo Water System Improvements, Applicant: Department of Water, County of Kauai, at Koloa, Kauai, TMK: (4) 2-4-004:005 & 049.

The Board asked staff to look into Executive Order on TMK 2-4-4:38 which is issued to the Department of Water. If the parcel is not being used to see if the Executive Order can be withdrawn.

Unanimously approved as submitted (McCrory/Inouye).

There being no further business, Chairperson Young adjourned the meeting at 9:41 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources